

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ALLIED WORLD NATIONAL  
ASSURANCE COMPANY,

11 Plaintiff,

12 v.

13 FOREMOST INSURANCE  
14 COMPANY,

15 Defendant.

CASE NO. C20-154 MJP

ORDER ON PLAINTIFF'S  
MOTION FOR A PROTECTIVE  
ORDER

16  
17 This matter comes before the Court on Plaintiff's Motion for a Protective Order. (Dkt.  
18 No. 64.) Having reviewed the Motion, Defendant's Opposition (Dkt. No. 70), Plaintiff's Reply  
19 (Dkt. No. 72), and all supporting materials, the Court GRANTS in part and DENIES in part the  
20 Motion.

21 **BACKGROUND**

22 Plaintiff Allied World National Assurance brings claims as assignee of its insured, Smart  
23 Circle International LLC, against Defendant Foremost Insurance Company. Allied alleges that  
24 Foremost failed to provide Smart Circle with full defense and indemnity coverage in a personal

injury lawsuit against Smart Circle. Allied pursues the following claims: (1) a declaratory judgment that Foremost owed a duty to defend and indemnify; (2) breach of the duty to defend; (3) breach of the duty to indemnify; (4) breach of the duty of good faith and fair dealing; (5) violations of the Consumer Protection Act; and (6) violations of the Washington Insurance Fair Conduct Act.

In ruling on Allied's motions for summary judgment, the Court held that Foremost owed Smart Circle a duty to defend on a primary basis and found that Foremost had breached that duty. (Dkt. No. 73.) The Court's Order narrows the scope of discovery in this case and impacts the Motion for a Protective Order, as explained below.

Allied asks the Court to prevent Foremost from obtaining responses to the following discovery requests:

INTERROGATORY NO. 1: Please identify each Allied Representative involved in the investigation and/or determination of insurance coverage for the Shelland Lawsuit, and the dates of their involvement and their role(s);

INTERROGATORY NO. 3: Please identify by bates-range each Communication in which Allied communicated to Smart Circle and/or Foremost its position regarding indemnity for Smart Circle under the Allied Policy relative to the Shelland Lawsuit;

INTERROGATORY NO. 4: Please state Your basis for determining that Allied owed no primary defense to Smart Circle for the claims against Fred Meyer for its negligence based upon the Distribution Agreement between Fred Meyer and Smart Circle in the Shelland Lawsuit;

INTERROGATORY NO. 5: Please state Your basis for determining that Allied owed no and/or limited indemnity to Fred Meyer in the Shelland Lawsuit;

REQUEST FOR PRODUCTION NO. 1: Produce a complete copy of every File maintained by You relating in any way to the Shelland Lawsuit, including, without limitation, all claim notes, correspondence addressing or involving the Shelland Lawsuit, and documentation of defense cost and indemnity reserves set relative to the Shelland Lawsuit;

1 REQUEST FOR PRODUCTION NO. 3: Produce all correspondence You  
issued to any entity regarding the Shelland Lawsuit;

2 REQUEST FOR PRODUCTION NO. 4: Produce each written document that  
3 sets forth the guidelines and/or standards for claims handling practices and/or  
procedures applicable to Your handling of the Shelland Lawsuit; and

4 REQUEST FOR PRODUCTION NO. 5: Produce all Documents and  
5 Communications Relating To or evidencing any amounts that You paid on  
behalf of Smart Circle with respect to the Shelland Lawsuit.

## 6 ANALYSIS

### 7 A. Legal Standard

8 Under Rule 26(b)(1), “[p]arties may obtain discovery regarding any nonprivileged matter  
9 that is relevant to any party’s claim or defense and proportional to the needs of the case,  
10 considering the importance of the issues at stake in the action, the amount in controversy, the  
11 parties’ relative access to relevant information, the parties’ resources, the importance of the  
12 discovery in resolving the issues, and whether the burden or expense of the proposed discovery  
13 outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1). But under Rule 26(c) “[t]he court may, for  
14 good cause, issue an order to protect a party or person from annoyance, embarrassment,  
15 oppression, or undue burden or expense. . . .” Fed. R. Civ. P. 26(c). “A party asserting good  
16 cause bears the burden, for each particular document it seeks to protect, of showing that specific  
17 prejudice or harm will result if no protective order is granted.” Foltz v. State Farm Mut. Auto.  
18 Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003). And the Court must “‘identify and discuss the  
19 factors it considered in its ‘good cause’ examination to allow appellate review of the exercise of  
20 its discretion.’” Id. (quoting Phillips v. Gen. Motors, 307 F.3d 1206, 1212 (9th Cir. 2002)).

### 21 B. Discovery Requests

22 Allied seeks a protective order to prevent Foremost from obtaining discovery about  
23 Allied’s claims handling process and coverage determinations in the Shelland lawsuit from  
24

1 which this litigation arises. (See Interrogatories Nos. 1, 3, 4, and 5; Requests for Production Nos.  
 2 1, 3, and 4.) And Foremost seeks documents showing how much Allied paid on behalf of Smart  
 3 Circle in the underlying Shelland lawsuit. (See Request for Production No. 5.)

#### 4 **1. Claims Handling and Coverage Determination Materials**

5 The Court agrees with Allied that the materials concerning its claims handling and  
 6 coverage determinations are not relevant in this matter. (See Interrogatories Nos. 1, 3, 4, and 5;  
 7 Requests for Production Nos. 1 (in part), 3, and 4.) The Court reviews Foremost's two arguments  
 8 in opposition, which fail to persuade the Court as to the relevance of these materials.

9 First, Foremost argues that the claims handling and coverage materials relate to whether  
 10 Foremost owes a duty to provide primary coverage, whether Allied subjectively believed it owed  
 11 something other than excess coverage, and why Allied paid part of Smart Circle's defense costs.  
 12 (Def. Opp. at 6-7 (Dkt. No. 70).) Because the Court has determined that Foremost owed a duty to  
 13 provide primary coverage and breached that duty, Allied's subjective belief about coverage  
 14 priority and the reasons it funded half of the defense costs are irrelevant. The information sought  
 15 appears to have no bearing on the remaining issues in this case.

16 Second, Foremost argues that these materials are relevant to the IFCA claim because  
 17 Allied claims it was "forced" to pay for Smart Circle's defense and indemnity costs. (Def. Opp.  
 18 at 7.) The Court rejects this argument. How Allied handled Smart Circle's claims does not have  
 19 any bearing on whether Foremost violated IFCA in handling Smart Circle's request for defense  
 20 and indemnification.

21 Because the Court finds that the materials sought in Interrogatories Nos. 1 (with the  
 22 limited exception noted below in Section B(2)), 3, 4, and 5 and Requests for Production Nos. 1,  
 23 3, and 4 are not relevant, it finds good cause to GRANT the Protective Order Allied seeks. The  
 24

1 Court notes that Allied failed to provide any evidence of an undue burden, prejudice, or expense  
2 that would it suffer if it had to provide these materials. But the Court finds that such evidence  
3 was not necessary given the fact that the materials sought are not relevant and therefore their  
4 production would be an unnecessary burden and expense in this case.

## 5           **2.       Amounts Paid on Behalf of Smart Circle**

6           Allied asks the Court to prevent Foremost from obtaining documents and information  
7 showing how much Allied paid on behalf of Smart Circle in the underlying Shelland lawsuit.  
8 (See Request for Production No. 5.) Foremost argues that this information is relevant to damages  
9 (i.e., the amount Foremost must reimburse Allied) and its own mitigation defense. Additionally,  
10 Foremost argues that Interrogatory No. 1 seeks the identity of people knowledgeable about  
11 Allied's mitigation of damages. The Court agrees with Foremost. The amount Allied paid on  
12 behalf of Smart Circle is relevant to damages and to the mitigation defense which concerns the  
13 amounts Smart Circle could have mitigated its damages. And Allied must identify the people  
14 with knowledge of these issues.

15           The Court also notes that Foremost's Request for Production No. 1 is broad enough to  
16 encompass documents relating to damages and mitigation. But any such documents would also  
17 appear to be responsive to Request for Production No. 5, which more narrowly and properly  
18 targets this issue. The Court therefore finds that Request for Production No. 1 is redundant on the  
19 issue of damages and overbroad to the extent it seeks documents about claims handling and  
20 coverage determinations. The Court therefore finds it appropriate to issue the requested  
21 protective order as to Request for Production No. 1.

22           Having found these two discovery requests to seek relevant information, the Court finds a  
23 lack of good cause to grant a protective order. Allied has failed to provide any evidence of a  
24

1 “specific prejudice or harm [that] will result if no protective order is granted.” See Foltz, 331  
2 F.3d at 1130. The Court therefore DENIES the Motion as to Request for Production No. 5 and  
3 Interrogatory No. 1 to the extent it is limited to damages and the amounts Smart Circle could  
4 have mitigated its damages.

### 5 CONCLUSION

6 Information and documents about Allied’s claims handling process and its subjective  
7 belief about its coverage obligations are irrelevant. The Court GRANTS Allied’s Motion as to  
8 Interrogatories Nos. 1 (in part), 3, 4, and 5; Requests for Production Nos. 1, 3, and 4, and  
9 ORDERS that Allied need not provide responses or documents to them. But because damages  
10 and Foremost’s failure to mitigate damage defense remain at issue in this case, Interrogatory No.  
11 1 (in part) and Request for Production No. 5 seek relevant information and documents. Given  
12 Allied’s failure to provide any evidence of prejudice or harm, the Court DENIES the Motion as  
13 Interrogatory No. 1 (as narrowed) and Request for Production No. 5.

14 The clerk is ordered to provide copies of this order to all counsel.

15 Dated March 2, 2021.



16  
17 Marsha J. Pechman  
18 United States District Judge  
19  
20  
21  
22  
23  
24